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## BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL  
CHAIRMAN  
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COMMISSIONER  
MARC SPITZER  
COMMISSIONER

Arizona Corporation Commission

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AZ CORP COMMISSION  
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IN THE MATTER OF THE INVESTIGATION INTO  
US WEST COMMUNICATION, INC.'S  
COMPLIANCE WITH THE § 271 OF THE  
TELECOMMUNICATIONS ACT OF 1996

DOCKET NO. T-00000A-97-0238

**COVAD COMMUNICATIONS COMPANY'S COMBINED SUPPLEMENTATION OF  
THE RECORD ON CHECKLIST ITEM 4 AND RESPONSE TO QWEST'S  
"SUPPLEMENTATION" OF THE RECORD**

Covad Communications Company ("Covad") respectfully submits the following  
Combined Supplementation of the Record on Checklist Item 4 and Response to Qwest's  
"Supplementation" of the Record:

**I. PRELIMINARY STATEMENT**

Far from being a supplementation of the record as requested in Section G  
(Verification of Compliance) of Staff's Final Report on Qwest's Compliance with Checklist Item  
No. 4 (Unbundled Loops), Qwest seeks to reopen and reargue issues under the guise of providing  
the data requested by Staff. While Covad would prefer at this time to merely supplement the  
record rather than reargue substantive recommendations made by Staff, Qwest's filing has, of  
necessity required further response by Covad. Covad therefore provides below additional  
information and data requested by Staff, as well as a brief response to the more argumentative  
portions of Qwest's purported evidentiary "Supplementation." Notably, the information and data  
submitted by Covad in connection with this filing demonstrates that the concerns Staff  
articulated in its recommendation on Checklist Item 4 continue to exist. There is no basis for

1 altering its recommendation of a finding of non-compliance.

2 **II. SUPPLEMENTATION OF EVIDENTIARY RECORD AND RESPONSE**

3 **A. Cooperative Testing/Preorder MLT**

4 **Loop quality continues to remain a critical issue for which Qwest has not yet**  
5 **provided any evidence of satisfactory resolution:**

6 It is both improper and inappropriate for Qwest to submit evidence on cooperative  
7 testing and then to assert that such evidence conclusively demonstrates it is provisioning orders  
8 in a Section 271-sufficient manner. As Qwest is fully aware, the adequacy of the PIDs, as well  
9 as the input data for those PIDs, is under challenge by CLECs. Indeed, Qwest itself has tacitly  
10 conceded the merit of CLECs' challenge, agreeing to a region-wide data reconciliation process  
11 under the auspices of Liberty Consulting Group.

12 In light of the substantial PID and performance data result differences between  
13 Qwest, on the one hand, and CLECs, on the other, a performance data workshop has been  
14 convened in this proceeding to address these issues. Performance results, in the form of  
15 provisioning and ordering data, should be submitted in connection with that proceeding, and not  
16 in connection with a purported supplementation of the record on Checklist Item 4. Nonetheless,  
17 because Qwest affirmatively has injected performance results into the evidentiary record on  
18 Checklist Item 4, Covad attaches hereto as *Exhibit 1* additional data regarding Qwest's  
19 performance of cooperative testing in the State of Arizona. As *Exhibit 1* shows, Qwest continues  
20 to fail to perform cooperative testing in a manner sufficient to satisfy Section 271 (despite an  
21 agreement to do so), cooperatively testing only a mere 33.73% of Covad's xDSL UNE loops.  
22 Qwest thus continues to fail to take the steps necessary to ensure the delivery of a "good" loop,  
23 capable of supporting xDSL services. Qwest cannot be found to be in compliance with Checklist  
24 Item 4.

1 Qwest argues that its "back end" solution – waiver of nonrecurring charge for the  
2 loop installation – is sufficient to resolve Staff's concerns. As Covad pointed out previously, it  
3 disagrees. Although waiver of the installation fee may resolve some of the financial  
4 repercussions associated with Qwest's failure to abide by its agreement (*i.e.*, Covad paying for  
5 something Qwest failed to provide), it simply does not resolve the core issue giving rise to  
6 Covad's complaint and underlying its inability to compete with Qwest—the failure to deliver a  
7 good loop. Consistent with this concern, the Texas Commission recently explicitly held that  
8 "proper provisioning is essential to providing equal opportunity for competition in the xDSL  
9 market"<sup>1</sup> because "[d]elays in provisioning serve to degrade the CLEC, and not the ILEC, in the  
10 mind of the customer at a time when the customer is forming first impressions about the  
11 CLEC."<sup>2</sup>

12 Curiously enough, even as it submits performance data, Qwest asserts that there is  
13 "nothing more to resolve" in connection with Checklist Item 4 because performance results will  
14 be reviewed at the end of the OSS testing. While Covad agrees that performance results will be  
15 addressed later, such data remains highly relevant to the evaluation of whether Qwest is in  
16 checklist compliance. The ACC cannot forward to the Federal Communications Commission  
17 (the "FCC") an endorsement of Qwest's application for Section 271 relief unless and until Qwest  
18 demonstrates that it satisfies both on paper and *in practice*<sup>3</sup> that the Arizona local services  
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21 <sup>1</sup> *Petition of Covad Communications Company and Rhythms Links, Inc. against Southwestern Bell Telephone*  
22 *Company for Post-Interconnection Dispute Resolution and Arbitration Under the Telecommunications Act of 1996*  
23 *Regarding Rates, Terms and Conditions and Related Arrangements for Line Sharing, Public Utility commission of*  
24 *Texas*, Docket Nos. 22168 and 22469 (June 2001) ("*Texas Arbitration Decision*"), p. 135.

<sup>2</sup> *Id.*

<sup>3</sup> *See In the Matter of Application by SBC Communications, Inc., Southwestern Bell Telephone Co., And*  
*Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of*  
*the Telecommunications Act of 1996 to Provide In Region, InterLATA Services in Texas*, Mem. Op. and Order, CC  
Docket No. 00-65, ¶52 (Jun. 30, 2000) ("*SBC Texas 271 Order*").

1 market is fully and irreversibly open<sup>4</sup> to competition. Data regarding Qwest's cooperative  
2 testing performance squarely applies to whether Qwest's current commercial performance  
3 satisfies Section 271.

4 Ultimately, as Staff correctly recognized, the issues of cooperative testing and  
5 preorder MLT -- and the consequent impact on Qwest's provisioning of loops capable of  
6 supporting xDSL services (as documented by some form of testing) -- goes to the heart of  
7 Checklist Item No. 4. The Texas Public Utility Commission also found that, if a loop that is  
8 delivered is not capable of supporting xDSL services, then "the loop was never provisioned  
9 properly in the first place" and should be counted as a "provisioning delay" or "miss" in its  
10 performance measure data.<sup>5</sup>

11 **B. Colorado xDSL FOC Trial and Qwest's Raw Loop Data Tool.**

12 **Qwest's FOC and loop delivery performance and its pre-qualification tool continue**  
13 **to remain suspect:**

14 Covad attached hereto as *Exhibit 2* the brief it filed in Colorado regarding the  
15 xDSL FOC trial and Qwest's Raw Loop Data Tool. As set forth more fully in *Exhibit 2*, Qwest's  
16 FOC and loop delivery performance during the course of that trial is insufficient to cause Staff to  
17 alter its current position with respect to Checklist Item 4.

- 18 1. Covad does not object to Qwest requesting that the FOC interval for  
19 xDSL loops be elongated to 72 hours. Covad's agreement is not based  
20 on the results of the FOC trial. To the contrary, Covad already operates  
21 under a 72 hour FOC interval and would prefer that its orders be  
22 included in the PID calculations to ensure payment under the QPAP,  
23 where required, will be made. As currently structured, Covad's orders  
24 are excluded from the PID calculations. See *Exhibit 2*.

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<sup>4</sup> See *In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, Mem. Op. and Order, CC Docket No. 99-295, FCC 99-404 (Dec. 22, 1999), ¶423 ("BANY 271 Order").

<sup>5</sup> *Id.*, p. 52.

2. While Covad withdrew its data regarding the xDSL FOC trial, Covad reserved its right to reopen the interval issue and provide further data on Qwest's OP-3/OP-4 performance during the review of performance data by the various state commissions. *Id.* The withdrawal of Covad's data was due primarily to the fact that Covad's xDSL FOC trial orders were placed consistent with Qwest's Standard Interval Guide of 6 days for xDSL loops region-wide rather than on the five days agreed upon for purposes of the FOC trial. Covad also reserves its right to reopen this issue to determine whether the processes implemented for purposes of a single-state, one-time only, time-limited trial not only will be available region-wide, but also will "stick" after Qwest receives Section 271 relief. *Id.* As Qwest admitted, that process is not yet in place in Arizona, Qwest "Supplementation", p. 6 ("Qwest is prepared to bring the process improvements from the FOC trial to Arizona as well."), nor is there currently any indication that Qwest's efforts during the trial can be sustained.
3. Staff of the Colorado Public Utilities Commission recommended that the data compiled by Qwest during the xDSL FOC trial not be considered conclusive in that Commission's review of Qwest's compliance with Section 271.
4. Qwest's Raw Loop Data Tool ("RLDT") fails to provide CLECs with any reliable and accurate method by which to "quickly and efficiently" determine whether a particular loop is capable of supporting xDSL service. See *Exhibit 2*.
5. Qwest is prone to overstating the "fixes" it has implemented in response to CLEC complaints about the RLDT. For example, Qwest represented that it has corrected the situation in which a CLEC cannot qualify a telephone number because it is non-published or not listed or simply been returned to the CLEC as a "no working telephone number." Qwest "Supplementation", p. 7. Yet, in reviewing Qwest's product/process mailouts, Covad was only able to locate a notification that permitted access to the "Loop Qualification Enhancement – Auto Qualification", which allows re-qualification of numbers for which IMA returns a "Not Qualified" response for a loop qualification request. See *Exhibit 3*. Of course, re-qualification occurs only on an approximate thirty day basis and is not available if Qwest has requested re-qualification of a TN. *Id.* Similarly, Qwest represents that it has made other RLDT fixes (facilities information for non-published numbers, etc.), yet provides no documentation that such fixes are anything more than a potential gleam in some Qwest engineer's eye. Qwest "Supplementation", p. 7.

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**C. Obligation to Build**

**Persuasive Authority Shows that Qwest Is Under an Obligation to Build Loops:**

Covad refers Staff to the Washington State Administrative Law Judge's recommendation to the Washington Utilities and Transportation Commission on the obligation to build. As the ALJ noted in her recommendations to the Commission on this same issue in the UNE context, Qwest improperly limits its analysis of the "existing network" just to existing facilities, rather than on the area that the network serves:

the incumbent LEC's "existing" network includes all points that it currently serves via interoffice facilities, and it is not required to extent its network to new points, based on competitors' requests. However, *the incumbent LEC is still required to provide access to UNEs within its existing network even if it must construct additional capacity within its existing network to make UNEs available to competitors.* Qwest implies that the term "existing network" only applies to actual facilities that are in place, *when in fact existing network applies to the "area" (end offices, serving wire centers, tandem switches, interexchange carrier points of presence, etc.) that Qwest's interoffice facilities serve. This same concept applies on the loop side of Qwest's network where Qwest is obligated to construct additional loops to reach customers' premises whenever local facilities have reached exhaust.*

The ALJ therefore concluded that: (1) Qwest must provide access to UNEs at any location currently served by Qwest's network; (2) Qwest must construct new facilities to any location currently served by Qwest when facilities in those locations are exhausted; and (3) where locations are outside of the area currently served by Qwest's network, Qwest must construct facilities under the same terms and conditions it would construct facilities for its own end user customers.<sup>6</sup>

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<sup>6</sup> Thirteenth Supplemental Order, Initial Order (Workshop Three): Checklist Item No. 2,5, and 6, Docket Nos. UT-003022 and UT-003040, July 2001, para. 80.

1           **Qwest's Held Order Policy Creates a Serious Issue for CLECs and Undermines the**  
2           **Reliability of Qwest's Performance Results:**

3           Qwest's new build policy has the negative effect of allowing Qwest to "self-  
4 improve" its performance under the PIDs without ever actually improving its performance.  
5 Under the policy, Qwest will reject orders if no facilities will be or are anticipated to be  
6 available. Qwest thus automatically caps the total number of delay days on any given order.<sup>7</sup> In  
7 so doing, Qwest circumvents its wholesale service performance obligations under the QPAP and,  
8 more specifically, PID measures OP-6B ("measures the average number of business days that  
9 service is delayed beyond the original due date provided to the customer for *facility reasons*  
10 *attributed to Qwest*") (emphasis added)<sup>8</sup>, and OP-15B ("reports the number of pending orders  
11 measured in the numerator of OP-15A that were delayed for *Qwest facility reasons*") simply by  
12 rejecting all orders that would go into held status due to a lack of facilities. If Qwest had not  
13 implemented the new build/held order policy, there would be a mechanism, in the form of QPAP  
14 PIDs, in place to track and monitor held orders.

15           As Staff recognized, the "held order" policy (or, more accurately, the "no held  
16 order policy") – even where network builds are disclosed -- results in Qwest being able to  
17 discriminate in favor of itself or retail customers. The network build policy does not alleviate the  
18 problem created by the new build/held order policy. Just because facilities may be planned does  
19 not mean an order can successfully be placed; as Section 9.1.2.1.4 points out, that job can be  
20 modified or cancelled at any time. Moreover, as Covad pointed out in its impasse brief,  
21 additional concerns render the network build notification problematic, and Qwest has in no way  
22 addressed those concerns in its "Supplementation."

23           <sup>7</sup> Qwest appears to contend that any CLEC that failed to object to this policy in the CICMP forum somehow  
24           precludes the objections raised in these Section 271 proceedings. There is no basis for Qwest's statement.

<sup>8</sup> Service Performance Indicator Definitions (PID).

1           **Qwest Did Away with the Forecasting Requirement Even in Face of Agreement by**  
2           **CLECs to Provide Forecasts If Qwest Would Simply Use Those Forecasts in its**  
3           **Network Plans:**

4           As Covad made clear in its Comments on both Emerging Services and Loops,  
5 Covad was more than willing to provide forecasts if such forecast would enable Qwest to meet  
6 its reasonable demand. Qwest thus did not "bow" to CLEC pressure. To the contrary, the  
7 withdrawal of the forecast requirement was unilateral and designed to eliminate any obligation  
8 on Qwest to meet CLEC demand – even as it issued the new build and held order policy which  
9 brought full circle the basis upon which Qwest will claim it is under no obligation to meet CLEC  
10 demand.

11           Qwest complains about the lack of utility of the forecasts submitted by CLECs.  
12 Qwest "Supplementation", p. 10. Yet, the form and content of Covad's forecasts was precisely  
13 what Qwest requested.<sup>9</sup> Consequently, Qwest cannot complain about the utility of the forecasts  
14 when it decided what information needed to be supplied.

15                           **D.     Anti-Competitive Conduct by Qwest Technicians**

16           **Qwest's Current Policies to Deter Anti-Competitive Conduct are Insufficient.**

17           As Staff recognized, Qwest's commitments in response to Covad's concerns about  
18 anti-competitive conduct by Qwest technician's are insufficient to deter and prevent that  
19 conduct. Indeed, even after all of the "forceful" reminders provided by Qwest to its employees,  
20 (1) in June, 2001, a Qwest employee(s) stole several pieces of equipment from Covad's  
21 collocation spaces in three Qwest Colorado COs;<sup>10</sup> (2) in August 2001, a Qwest technician at  
22 Covad's end user's premises, *while acting as a point of contact on behalf of Covad with its end*

23           <sup>9</sup> Direct Testimony of Michael Zulevic, June 7, 2001, Washington Utilities and Transportation Commission Docket  
24           Nos. 3022 and 3040, pp. 3-4. Mr. Zulevic's testimony is publicly available on the WUTC website.

<sup>10</sup> See Motion for Leave to Supplement the Record.



1 user customer, took the opportunity to solicit that end user customer's business, providing the  
2 customer with a DSL brochure and encouraging him to switch to Qwest. See *Exhibit 4*.

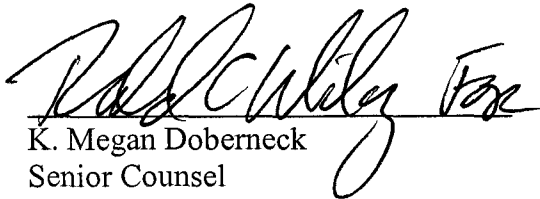
3 While there may be some "bad apples" in the Qwest barrel, the numerosity of  
4 those bad apples, and the frequency with which they seek to disparage Covad or engage in anti-  
5 competitive behavior is far and away greater than with any other ILEC.<sup>11</sup> The inevitable  
6 conclusion, therefore, is that Qwest's paper policies are absolutely without teeth and, in fact, are  
7 regularly ignored. Indeed, disparagement of Covad is rampant within Qwest, as is evidence by a  
8 recent email from one Qwest employee to hundreds of her fellow employees, in the email, the  
9 Qwest employee gleefully describes Covad's restructuring efforts as "the third batter down" and  
10 the "end of the national DLEC game," and referred to Covad's announcement of continued  
11 operations as "delusional" and the result of "drinking too much Kool-Aid." This particular  
12 Qwest employee predicts that "its quite likely a judge will say they have no chance to succeed  
13 and force them to immediate Ch 7 liquidation." See *Exhibit 5*.

14 DATED this 3rd day of October, 2001.

15 RESPECTFULLY SUBMITTED,

16 COVAD COMMUNICATIONS COMPANY

17  
18 By:

  
K. Megan Doberneck  
Senior Counsel  
7901 Lowry Boulevard  
Denver, Colorado 80230  
720-208-3636  
720-208-3256 (facsimile)  
e-mail: [mdoberne@covad.com](mailto:mdoberne@covad.com)

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24 <sup>11</sup> Washington Workshop 4, Trans., pp. 04381. This transcript is publicly available on the WUTC's website.

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**CERTIFICATE OF SERVICE**

I, Todd C. Wiley, Esq., hereby certify that an original and ten (10) copies of the Covad Communications Company's Combined Supplementation of the Record on Checklist Item 4 and Response to Qwest's "Supplementation" of the Record, Docket No. T-00000A-97-0238, were filed on this 3<sup>rd</sup> day of October, 2001, to the following:

Arizona Corporation Commission  
Docket Control-Utilities Division  
1200 West Washington Street  
Phoenix, AZ 85007-2996

and a true and correct copy of Covad Communications Company's Combined Supplementation of the Record on Checklist Item 4 and Response to Qwest's "Supplementation" of the Record was served via hand delivery and overnight delivery this 3<sup>rd</sup> day of October, 2001, on the following:

Hearing Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

Maureen Scott  
Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

Matt Rowell  
Utilities Division  
1200 West Washington Street  
Phoenix, AZ 85007

Phil Doherty  
545 South Prospect Street, Suite 22  
Burlington, VT 05401

W. Hagood Bellinger  
5312 Trowbridge Drive  
Dunwoody, GA 30338

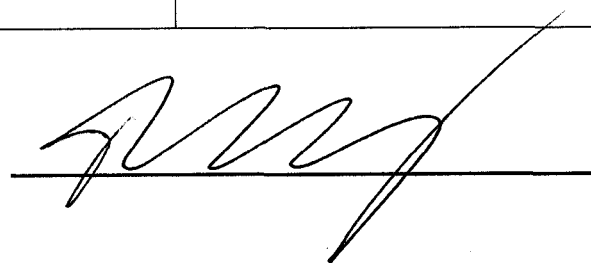
Charles Steese  
Andrew Crain  
Qwest Corporation  
1801 California Street, Suite 5100  
Denver, CO 80202

and a true and correct copy of Covad Communications Company's Combined Supplementation of the Record on Checklist Item 4 and Response to Qwest's "Supplementation" of the Record was sent via electronic mail; on this 3<sup>rd</sup> day of October, 2001, to the following:

Mark Dioguardi TIFFANY AND BOSCO PA 500 Dial Tower 1850 N. Central Avenue Phoenix, Arizona 85004	Nigel Bates ELECTRIC LIGHTWAVE, INC. 4400 NE 77 <sup>th</sup> Avenue Vancouver, Washington 98662	Thomas L. Mumaw Jeffrey W. Crockett SNELL & WILMER One Arizona Center Phoenix, Arizona 85004-0001
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1	Darren S. Weingard Stephen H. Kukta SPRINT COMMUNICATIONS CO 1850 Gateway Dr., 7 <sup>th</sup> Floor San Mateo, CA 94404-2467	Thomas H. Campbell LEWIS & ROCA 40 N. Central Avenue Phoenix, Arizona 85007	Andrew O. Isar TRI 4312 92 <sup>nd</sup> Avenue, N.W. Gig Harbor, Washington 98335
2			
3			
4	Michael W. Patten Roshka Heyman & Dewulf 400 N. 5th St., Ste. 1000 Phoenix, AZ 85004	Richard M. Rindler Morton J. Posner SWIDER & BERLIN 3000 K Street, N.W. Suite 300 Washington, DC 20007	Charles Kallenbach AMERICAN COMMUNICATIONS SERVICES I 131 National Business Parkway Annapolis Junction, MD 20701
5			
6			
7			
8	Thomas F. Dixon MCI TELECOMMUNICATIONS CORP 707 17th Street, #3900 Denver, Colorado 80202	Jon Loehman, Managing Director SBC Telecom, Inc. 5800 Northwest Parkway Suite 135, Room 1.S.40 San Antonio, TX 78249	Richard S. Wolters AT&T & TCG 1875 Lawrence Street, Room 1575 Denver, Colorado 80202
9			
10			
11	Joyce Hundley UNITED STATES DEPARTMENT OF JUSTICE Antitrust Division 1401 H Street NW, Suite 8000 Washington, DC 20530	Joan Burke OSBORN MALEDON 2929 N. Central Avenue, 21st Floor P.O. Box 36379 Phoenix, Arizona 85067-6379	Scott S. Wakefield, Chief Counsel RUCO 2828 N. Central Avenue, Suite 1200 Phoenix, Arizona 85004
12			
13			
14			
15	Mark J. Trierweiler Vice President Government Affairs AT&T 111 West Monroe St., Suite 1201 Phoenix, Arizona 85004	Daniel Waggoner DAVIS WRIGHT TREMAINE 2600 Century Square 1501 Fourth Avenue Seattle, WA 98101-1688	Alaine Miller NEXTLINK Communications, Inc. 500 108 <sup>th</sup> Avenue NE, Suite 2200 Bellevue, WA 98004
16			
17			
18			
19	Douglas Hsiao RHYTHM LINKS, INC. 6933 S. Revere Parkway Englewood, CO 80112	Raymond S. Heyman Randall H. Warner ROSHKA HEYMAN & DeWULF Two Arizona Center 400 N. Fifth Street, Suite 1000 Phoenix, Arizona 85004	Diane Bacon, Legislative Director COMMUNICATIONS WORKERS OF AMERICA 5818 North 7 <sup>th</sup> Street, Suite 206 Phoenix, Arizona 85014-5811
20			
21			
22			
23			
24			

1	Gena Doyscher GLOBAL CROSSING LOCAL SERVICES, INC. 1221 Nicollet Mall Minneapolis, MN 55403- 2420	Karen L. Clauson ESCHELON TELECOM, INC. 730 Second Avenue South, Suite 1200 Minneapolis, MN 55402	Mark P. Trnichero Davis, Wright Tremaine 1300 SW Fifth Avenue, Suite 2300 Portland, OR 97201
4	Robert S. Tanner Davis, Wright Tremaine 17203 N. 42 <sup>nd</sup> Street Phoenix, AZ 85032	Bradley Carroll, Esq. COX ARIZONA TELCOM, L.L.C. 1550 W. Deer Valley Rd. Phoenix, AZ 85027	Mark N. Rogers EXCELL AGENT SERVICES, L.L.C. 2175 W. 14 <sup>th</sup> Street Tempe, AZ 85281
7	Janet Livengood Regional Vice President Z-Tel Communications, Inc. 601 S. Harbour Island Blvd. Tampa, FL 33602	Jonathan E. Canis Michael B. Hazzard Kelly Drye & Warren L.L.P. 1200 19 <sup>th</sup> Street, NW, 5 <sup>TH</sup> Floor Washington, D.C. 20036	Andrea P. Harris Senior Manager, Regulatory Allegiance Telecom, Inc of Colorado 2101 Webster, Suite 1580 Oakland, CA 94612
10	Timothy Berg FENNEMORE CRAIG 3003 N. Central Ave., Suite 2600 Phoenix, Arizona 85016	M. Andrew Andrade, Esq. TESS Communications, Inc. 5261 S. Quebec St. Ste 150 Greenwood Village, CO 80111	Maureen Arnold Qwest Communications, Inc. 3033 N. Third Street, Room 1010 Phoenix, Arizona 85012
12	Dennis D. Ahlers, Sr. Attorney Eschelon Telecom, Inc. 730 Second Ave. South, Ste. 1200 Minneapolis, MN 55402		



12263-0005/959837



# **EXHIBIT 1**

**CONFIDENTIAL**

**(Filed Under Seal With Commission)**



**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO**

**IN THE MATTER OF THE  
INVESTIGATION INTO  
U S WEST COMMUNICATION,  
INC.'S COMPLIANCE WITH  
§ 271(C) OF THE  
TELECOMMUNICATIONS ACT  
OF 1996**

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**DOCKET NO. 97I-198T**

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**COVAD COMMUNICATIONS COMPANY'S BRIEF ON THE COLORADO  
xDSL FOC TRIAL AND QWEST'S RAW LOOP DATA TOOL**

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Covad Communications Company ("Covad") respectfully submits this brief regarding the results of the Colorado xDSL FOC Trial and Qwest's Raw Loop Data Tool:

**I. EXECUTIVE SUMMARY**

The thorn in Qwest's "271 side" is its historical inadequate FOC and loop delivery performance. Indeed, so substandard has that performance been that Qwest, upon its own initiative, implemented the Colorado xDSL FOC trial, a two month trial pursuant to which Qwest purportedly sought to improve to an acceptable level its Firm Order Confirmation ("FOC") and on time loop delivery performance for xDSL loops (*i.e.*, UNE loops capable of supporting xDSL services). Part and parcel of that trial was the contemporaneous and coexistent effort on the part of Qwest to demonstrate the adequacy, accuracy and reliability of its newest, most comprehensive, and highly touted pre-qualification tool, the Raw Loop Data Tool (the "RLDT").



As set forth more fully below, the results of the Colorado xDSL FOC trial are mixed. Despite those results, however, the parties have reached resolution on certain issues and as well as the method by which to proceed in the future. Specifically:

(1) Qwest failed to prove that its on time FOC performance is sufficient to fulfill the statutory conditions for entry. Despite that inadequate performance, Covad does not object to Qwest's request that Performance Indicator Definition ("PID") PO-5 (FOCs On Time), be modified to extend the FOC interval for xDSL UNE loops to 72 hours. As Covad has indicated previously, a 72-hour FOC does not represent any change to its current FOC interval, and thus has no impact on its business operations. However, a material benefit flowing from such change is the inclusion of Covad's UNE loop orders in the PO-5 measurement; currently, Covad's UNE loop orders are excluded from the 24 hour PO-5 measurement.

(2) Despite continuing differences regarding the results of Qwest's loop delivery performance, Covad withdraws its data from, and testimony regarding, the Qwest xDSL FOC trial. Accordingly, this issue may be deemed closed. However, Covad explicitly and unambiguously reserves its right to review and, if necessary, reopen, this issue upon the conclusion of the Regional Oversight Committee's (the "ROC") OSS testing.

(3) Qwest's RLDT proved to be an unacceptable performer. Not only is the RLDT confusing, incomplete and difficult to use, but also it provides patently inaccurate information. Thus, because Qwest continues unlawfully and improperly to fail and refuse to provide CLECs with a meaningful loop makeup tool, Qwest may not be deemed to have satisfied its obligations under the *UNE Remand Order* and Checklist Item 4.

Attached hereto as Exhibit 1 are Covad's proposed findings of fact, conclusions of law and proposed form of order.

## II. ARGUMENT

A necessary prerequisite to the approval of Qwest's application to provide inter-LATA long distance service is proof that Qwest has "fully implemented" the § 271 competitive checklist, thereby presumptively opening its local telecommunications markets to competition.<sup>1</sup> Qwest thus must provide "actual evidence demonstrating its present compliance with the statutory conditions for entry,"<sup>2</sup> which requires, among other things, that Qwest provide nondiscriminatory access to unbundled network elements,<sup>3</sup> such as unbundled loops.

This Commission is charged with the critical function of determining to a reasonable degree of certainty that Colorado's local markets are open to competition.<sup>4</sup> Because the FCC relies heavily upon the State's rigorous factual investigation, review and analysis of Qwest's compliance, or not, with a particular checklist item, this Commission's review of the record before it may not be undertaken lightly. To the contrary, before approving Qwest's request for § 271 relief, this Commission must ensure that Qwest has provided sufficient evidence to prove, by a preponderance of the evidence, that it has fully implemented<sup>5</sup> Checklist Item 4. In this regard, the most probative evidence of "nondiscriminatory access to . . . [unbundled loops] is actual

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<sup>1</sup> *In the Matter of the Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, CC Docket Nos. 96-978 & 95-185 (Rel. Aug. 8, 1996), ¶ 3 ("Local Competition Order").

<sup>2</sup> *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, Memorandum Op. and Order, CC Docket No. 99-295, FCC 99-404 (Rel. Dec. 22, 1999), ¶ 37 ("Bell Atlantic 271 Order").

<sup>3</sup> 47 U.S.C. § 271(a)(2)(B)(ii).

<sup>4</sup> 47 U.S.C. § 271(d)(2)(B).

<sup>5</sup> *Bell Atlantic 271 Order*, ¶ 44.

commercial usage, and “[p]erformance measures are an especially effective means of providing us with evidence of the quality and timeliness of the access provided by a BOC to requesting carriers.”<sup>6</sup> Thus, in order to demonstrate that its has satisfied the competitive checklist, Qwest must:

- a) provide sufficient performance data to support its contention that the statutory requirements are satisfied;
- b) identify the facial disparities between the applicant’s performance for itself and its performance for competitors;
- c) explain why those facial disparities are anomalous, caused by forces beyond the applicant’s control (*e.g.*, competing carrier-caused errors), or have no meaningful adverse impact on a competing carrier’s ability to obtain and serve customers; and
- d) provide the underlying data, analysis, and methodologies necessary to enable the Commission and commenters meaningfully to evaluate and contest the validity of the applicant’s explanations for performance disparities, including, for example, carrier specific carrier-to-carrier performance data.<sup>7</sup>

The ultimate burden of proof on any and all checklist items lies with Qwest, even if “no party files comments challenging compliance with a particular requirement.”<sup>8</sup>

#### **A. UNBUNDLED LOOPS**

Qwest must provide to CLECs, including Covad, “[l]ocal loop transmission from the central office to the customer’s premises, unbundled from local switching or other services.”<sup>9</sup> The FCC has defined the loop as “a transmission facility between a distribution frame, or its equivalent, in an incumbent LEC central office, and the network

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<sup>6</sup> *Application of Verizon New England, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks, Inc., for Authorization to Provide In-Region, InterLATA Service in Massachusetts*, Docket No. 01-9, FCC 01-130 (Rel. Apr. 16, 2001) (“VZ MA 271 Order”), ¶ 12 (citing *Bell Atlantic New York Order*, ¶ 53).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*, ¶ 47.

<sup>9</sup> 47 U.S.C. § 271(c)(2)(B)(iv).

interface device at the customer premises.”<sup>10</sup> Subsumed within the definition of a “loop” are “two-wire and four-wire loops that are conditioned to transmit the digital signals needed to provide service such as ISDN, ADSL, HDSL, and DS1-level signals.”<sup>11</sup> To satisfy its obligation under § 271, therefore, Qwest must prove not only that it has a concrete and specific legal obligation to furnish x-DSL capable loops, but also that it is providing these loops to competitors consistent with their demand and at an acceptable level of quality.<sup>12</sup>

**1. Qwest’s FOC Performance. (COIL Loop 24).**

During March-April 2001, Qwest implemented a two month xDSL UNE loop FOC trial in the State of Colorado, which was intended and designed to improve Qwest’s poor FOC and xDSL UNE loop delivery performance. Solely for purposes of the trial, Qwest extended the FOC interval to 72 hours in order to provide it additional time within which to do the work necessary to permit it to provide CLECs with a meaningful xDSL UNE loop delivery due date. Stated more simply, in exchange for an additional 48 hours to return a FOC to CLECs, Qwest represented that the FOC returned would be more reliable and credible, and that a CLEC actually could count on an xDSL UNE loop being delivered within the intervals specified. If the trial proved successful, Qwest anticipated approaching the ROC (the “ROC”), and requesting that the FOC interval for xDSL UNE loops be extended to 72 hours.

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<sup>10</sup> *Bell Atlantic 271 Order*, ¶ 268; *Local Competition Order*, 11 FCC Rcd at 15691.

<sup>11</sup> *Local Competition Order*, ¶ 380; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 99-238 (Rel. Nov. 5, 1999) (“*UNE Remand Order*”), ¶ 166-167.

<sup>12</sup> *Bell Atlantic 271 Order*, ¶ 269; *Application of BellSouth Corporation Pursuant to Section 271 of the Communications Act of 1934, As Amended, To Provide In-Region InterLATA Services in Louisiana*, CC Docket No. 98-121, FCC 98-271, released October 13, 1998, ¶ 54 (“*BellSouth Second Louisiana Order*”).

Qwest failed to demonstrate that its FOC performance improved in any meaningful manner, providing Covad with a FOC within the 72 hour time period a meager 75% of the time.<sup>13</sup> Under the FCC's most recent orders granting Section 271 relief, such performance is insufficient to establish checklist compliance:

'[A]lthough [Verizon] includes xDSL orders with other loop orders in the denominator of the relevant metric, based upon our review of [Verizon's] performance data, it appears that [Verizon] returns [xDSL confirmation notices] within the stated interval almost all of the time.' For example, from September through December 2000, respectively, for 'Loop/Pre-qualified Complex/LNP' orders, Verizon timely returned 99.68, 99.82, 99.48, and 99.79 percent of confirmation notices for flow-through orders within 2 hours; 97.35, 97.35, 97.27, and 97.88 percent of confirmation notices for orders of less than 10 lines within 24 hours; and 96.90, 99.73, 100.00, and 99.74 percent of confirmation notices for orders equal to or more than 10 lines within 72 hours. Verizon likewise exceeded the 95 percent benchmark for timely return of reject notices during this period. 'Pre-qualified Complex' orders encompass orders for pre-qualified xDSL-capable loops, and include specifically orders for pre-qualified 2-wire xDSL and 2-wire digital loops. Verizon also appears to have exceeded the 95 percent benchmark for timely return of confirmation and reject notices with respect to manually qualified, 2-wire xDSL loop orders. For example, from September through December 2000, respectively, for "2 Wire xDSL Service" orders, Verizon timely returned 98.75, 98.67, 99.25, and 96.77 percent of confirmation notices, and 98.80, 98.92, 99.38, 97.75 percent of reject notices, for orders of less than 10 lines within 72 hours.<sup>14</sup>

Despite Qwest's poor PO-5 performance, Covad does not object to Qwest requesting that the PO-5 interval for xDSL UNE loops be extended to 72 hours. As Covad has indicated previously, it currently has an agreement with Qwest pursuant to which Qwest will return a FOC within 72 hours. Consequently, a change in the PO-5 interval will not alter Covad's business and contractual relationship with Qwest with respect to the agreed-upon FOC interval. However, such change will benefit Covad,

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<sup>13</sup> This data is contained in an email from Nancy Mirabella, dated June 19, 2001, sent to all participants on the June 18, 2001 call regarding the FOC trial, or any participant in Docket No. 198T that requested that the data be provided. See Exhibit 2, attached hereto.

<sup>14</sup> *VZ MA 271 Order*, n. 124 (internal citations omitted).

because its orders will be included in the PO-5 measurement if changed to a 72 hour interval.

## **2. Qwest's Loop Delivery Performance. (COIL Loop 24).**

The FCC has made clear that the percentage of installation commitments met/missed is one of the most probative indicators of whether an incumbent LEC, such as Qwest, is provisioning loops in a nondiscriminatory fashion. Indeed, the question of whether Qwest has opened up its local markets to meaningful competition<sup>15</sup> turns on Qwest's ability to demonstrate that there is no evidence of "systemic performance disparities that have resulted in competitive harm or otherwise denied competing carriers a meaningful opportunity to compete."<sup>16</sup>

As Qwest acknowledged, CLECs, including Covad, raised regular and serious concerns regarding Qwest's FOC and loop delivery performance. Consequently, Qwest implemented the Colorado xDSL UNE loop FOC Trial in an effort to implement training, processes and procedures that would improve both its ability to provide a meaningful FOC and its loop delivery performance.

Along with several other CLECs, Covad agreed to participate in the trial. Subsequent to the conclusion of the trial, Covad worked with Qwest to review the parties' data and to attempt to reconcile their results. After extensive data reconciliation and discussions with Qwest, Covad has agreed to withdraw at this time its data regarding, and testimony addressing, Qwest's loop delivery performance during the Colorado xDSL FOC trial. Further, this issue may be deemed closed. However, Covad specifically,

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<sup>15</sup> *Bell Atlantic 271 Order*, ¶¶ 194, 195 and 270.

<sup>16</sup> *VZ MA 271 Order*, ¶ 122 (citations omitted).

expressly and unambiguously reserves its right, if appropriate and/or necessary, to reopen this issue at the conclusion of the ROC's OSS testing.

Covad reserves its right to reopen this issue, not out of a desire to resuscitate closed issues, but rather to ensure that Qwest's OP-3 (Installation Commitments Met) performance be measured under accurate and realistic circumstances. As Ms. Liston acknowledged during the conference call on June 18, 2001 in Docket No. 198T, the trial was just that -- a limited time period during which Qwest changed its FOC instructions, processes and procedures to determine whether such changes would facilitate delivery of a meaningful FOC.<sup>17</sup> Further OSS testing should confirm whether Qwest can continue to adhere to such instructions, processes and procedures on a statewide, permanent basis, and in the absence of a time limited, yet extraordinarily intense and extensive effort, on the part of Qwest to prove the trial a success.<sup>18</sup>

Covad also reserves its right to review the OSS test results, and possibly reopen this issue, in light of the impact its assumptions regarding Qwest's loop delivery interval and OP-3 performance had on the results reported by Covad. Stated succinctly, Covad does not track the "completion date" provided by Qwest, but rather calculates the order close date as that date on which Covad can verify the delivery of a loop capable of supporting xDSL services.<sup>19</sup> As a consequence, and to ensure even-handed treatment of Qwest, Covad assumed that Qwest met the due date contained in the FOC 100% of the time and produced its data results accordingly.

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<sup>17</sup> CO Trans, June 18, 2001, pp. 12-13.

<sup>18</sup> See, e.g., CO Trans., June 18, 2001, p. 8.

<sup>19</sup> Qwest suggests that there is something improper in Covad tracking a completion date that differs from what Qwest defines as the "completion date". Yet, there is nothing improper about a company tracking those data points that actually assist in its operations; namely, that date by which Covad can guarantee that Qwest has finally provided a loop capable of supporting the services Covad seeks to offer its end user customers.

Despite the substantial benefits flowing to Qwest from that assumption, Qwest objected to Covad's use of any type of assumption. In response, during the first round of data reconciliation Covad offered as an alternative to track the completion date according to the date on which cooperative testing was performed by Qwest.

From Covad's perspective, this data point provided an easy compromise between the parties because cooperative testing performed during the loop provisioning process necessarily occurs simultaneously on the day the loop is delivered. Qwest nonetheless refused to use the cooperative testing date, despite its 100% reliability as a proxy for the completion date posted by Qwest on its web site.<sup>20</sup> Accordingly, because of Qwest's objections, Covad reverted to measuring Qwest's loop delivery performance consistent with the due dates contained in the FOC.

It was only after the conclusion of the FOC trial that Covad determined that all orders submitted via EDI were automatically populated with a due date for Covad's UNE loop orders throughout the Qwest region, rather than the due date specifically identified for purposes of this trial. This fact necessarily impacted Covad's OP-3 results and, accordingly, Covad withdraws its xDSL FOC trial results at this time. Such withdrawal does not indicate that Covad believes this issue is finally and fully resolved. To the contrary, as stated above, Covad reserves its right to review Qwest's OP-3 performance at the conclusion of the OSS testing, compare that data to its own, and challenge any data disparities.

**3. Qwest's RLDT Fails to Provide CLECs With Meaningful Loop Makeup. (COIL Loop-14(a)).**

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<sup>20</sup> Notably, during the second round of data reconciliation, one of Qwest's employees with responsibility for measuring and reporting Qwest's OP-3 results, inquired as to why Covad did not simply measure the completion date in accordance with the cooperative testing date, rather than making assumptions based on the due date contained in the FOC.



Historically, “because characteristics of a loop, such as its length and the presence of various impediments to digital transmission, can hinder certain advanced services technologies, carriers often seek to “pre-qualify” a loop by accessing basic loop make-up information that will assist carriers in ascertaining whether the loop, either with or without the removal of the impediments, can support a particular advanced service.”<sup>21</sup> Recognizing the critical role that “pre-qualification” thus plays in facilitating CLEC entry into an incumbent’s local markets, the FCC requires, as part of its *prima facie* case, that an incumbent LEC provide CLECs with meaningful loop makeup information:

Whether a prospective customer can be provided a particular advanced service often depends upon the carrier having access to detailed information about available loops, including the actual loop length and the presence of bridged taps, load coils, and digital loop carrier equipment. As the Commission previously has explained, a BOC’s duty to provide nondiscriminatory access to OSS extends beyond the interface components to encompass all of the processes and databases used by the BOC in providing services to itself and its customers ... If new entrants are to have a meaningful opportunity to compete, they must be able to determine during the pre-ordering process as quickly and efficiently as can the incumbent, whether or not a loop is capable of supporting xDSL-based services.<sup>22</sup>

Despite this unambiguous requirement, Qwest’s RLDT fails to provide CLECs with any reliable and accurate method by which to “quickly and efficiently” determine whether a particular loop is capable of supporting xDSL service.

During the course of the Colorado FOC trial, Covad undertook a contemporaneous analysis of the accuracy of the RLDT. Even a cursory review of some

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<sup>21</sup> See *Bell Atlantic 271 Order*, ¶ 140.

<sup>22</sup> *Bell Atlantic 271 Order*, ¶ 141.

of the orders submitted by Covad during the course of the FOC trial<sup>23</sup> demonstrates that Qwest's RLDT suffers from numerous and severe deficiencies:

- (1) Covad was unable to pre-qualify 70 orders because the RLDT either did not recognize or contain information for the end user's telephone number, or the RLDT did not recognize a direct match even after that address had been validated against Qwest's address validation data base;
- (2) no distance was available for 14 orders;
- (3) no MLT distance was provided on 27 orders;
- (4) for 19 line shared orders, placed on Qwest's "jeopardy list" on May 7 and May 14, 2001, the RLDT indicated no bridge tap or load coil was present when, in fact, bridged tap and load coils were on the line<sup>24</sup>; and
- (5) 35% of the orders submitted resulted "in a no working telephone number response" that materially impeded CLECs' ability to use the RLDT.<sup>25</sup>

This itemization, standing alone, demonstrates that Qwest's RLDT fails to provide CLECs with meaningful loop makeup information. Yet, this itemization does not even begin to address the "false positive" scenario in which the information provided by the RLDT shows that an order can be successfully placed and closed, and yet it cannot. In this regard, Covad provided Qwest seventeen examples in which there was a non-loaded loop of 12,000 feet or less and, yet, an ADSL order was cancelled.<sup>26</sup> Nor does this itemization include the problem of "false negatives", or the situation, of which Covad provided Qwest several examples, where a CLEC can successfully close an order even though the RLDT indicates otherwise (e.g., ADSL orders closed where pair gain

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<sup>23</sup> See Exhibit 3, attached hereto. This Exhibit was provided by Covad to Qwest via email on June 7, 2001.

<sup>24</sup> See Exhibit 4, attached hereto. This Exhibit was provided by Covad to Qwest via facsimile on June 12, 2001.

<sup>25</sup> Supp. Aff. of Jean Liston, dated May 9, 2001, pp. 7-8.

<sup>26</sup> See Exhibit 3.

purportedly on the line).<sup>27</sup> Finally, this itemization does not include those situations in which Covad cannot pre-qualify at all a new Qwest voice customer who seeks data service from Covad until up to thirty days after that customer has begun receiving voice service from Qwest.<sup>28</sup>

Even as Qwest attempted to “nit pick” Covad’s findings, challenging only eighteen examples provided, Covad continued to unearth additional problems with the RLDT. More specifically, Covad determined that, depending on the validation method used (*i.e.*, telephone number versus address), more or less information is provided. For example, on one particular order, the RLDT provided loop makeup information when the telephone number was used, but provided no information when the validated address was used.<sup>29</sup> Even more egregiously, on yet another order, the validated telephone number pulled up the wrong address, while the validated address indicated that there was no working telephone number on the premises.<sup>30</sup> Equally problematic are orders in which one address pulls up two telephone lines with the identical telephone number – an obvious impossibility – but with *different* loop makeup information.<sup>31</sup>

Moreover, there is no consistency within Qwest’s RLDT. Where pair gain is on the line for one PON, no MLT distance and no segment loop length are provided. Yet, on another PON, even though pair gain is on the loop, the segment loop length is included.<sup>32</sup> Similarly, in one screen shot for one particular loop segment, Qwest’s RLDT suggests

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<sup>27</sup> Id.

<sup>28</sup> CO Trans., May 23, 2001, pp. 184-194; see also AZ IWO 1119, dated May 16, 2001, attached hereto as Exhibit 5.

<sup>29</sup> See Exhibit 6, Tab A, attached hereto. Although Covad made this exhibit available to Qwest on June 13, 2001, Qwest did not request a copy until July 6, 2001.

<sup>30</sup> Id., Tab B.

<sup>31</sup> Id., Tab C.

<sup>32</sup> Id., Tab D.

that the loop is non-loaded (as designated by the “nl” indicator in the make up description) even though load coils also are apparently present on the loop.<sup>33</sup>

It is painfully evident that Qwest’s RLDT regularly fails to provide CLECs with accurate and meaningful loop makeup information. Because such failure falls afoul of the FCC’s express mandate that incumbent LECs provide CLECs with the ability to quickly and efficiently pre-qualify orders, this Commission must find that Qwest has failed to establish its compliance with Checklist Item 4.

Qwest attempts to evade its obligations to provide comprehensive and accurate information, arguing that its retail division is equally subject to any deficiency or inaccuracy in information.<sup>34</sup> Yet that claim is suspect, in light of a particularly telling document –later hastily corrected – that demonstrates conclusively that Qwest regularly provided itself with corrected loop makeup information that was not made available to CLECs.

In Exhibit 5 Qwest 61, Qwest instructed its outside plant personnel to update outside plant information when they determined that the outside plant differed from the information contained in LFACs. Critically, Qwest permitted its outside plant personnel to update that information either through a *sales referral directly to Qwest’s Megabit retail division* or through a database update. While Qwest protested that this policy has been changed, albeit only on May 24, 2001<sup>35</sup> and only after its continuing attempt to give its retail side a competitive advantage was detected by CLECs and Staff, it does nothing to eliminate the well-founded belief that Qwest uses its control over outside plant and essential facilities to give itself a competitive advantage.

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<sup>33</sup> Id., Tab E.

<sup>34</sup> See *SWBT Kansas/Oklahoma Order*, ¶ 126.

The only method by which to eliminate the advantage Qwest has given to itself by providing “exclusive” LFACs updates to its Megabit Retail department for the past five years is to provide CLECs with direct access to the LFACs database. Direct access to LFACs will permit this Commission to ensure, consistent the FCC’s express directive in the *UNE Remand Order*, that Qwest “provide competitors with access to all of the same detailed information about the loop available to [itself], and in the same time frame as any of [Qwest’s] personnel could obtain it, so that a requesting carrier could make an independent judgment at the pre-ordering stage about whether a requested end user loop is capable of supporting the advanced services equipment the requesting carrier intends to install.”

It is irrelevant, despite Qwest’s contention to the contrary, that LFACs is not a “searchable” database. As the FCC clarified in the *VZ MA 271 Order*, the relevant inquiry under the *UNE Remand Order* is not whether an ILEC’s “retail arm or advanced services affiliate has access to such underlying information but whether such information exists anywhere in [the ILEC’s] back office and can be accessed by any of [the ILEC’s] personnel.”<sup>36</sup>

Moreover, Qwest’s claim that direct access to LFACs must be denied on the grounds that certain information contained in LFACs is proprietary is a sham. More particularly, Exhibit 5 Qwest 73 includes the form that the outside plant personnel are required to complete when updating the LFACs database. This form requests that the Qwest personnel provide information regarding the type of cable, pair and termination, the length of each segment, the resistance on each segment, and whether load coils or

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<sup>35</sup> See Exhibit 5 Qwest 73.

<sup>36</sup> *VZ MA 271 Order*, ¶ 430.

bridged taps are present. None of this information appropriately may be claimed as confidential and/or proprietary and thus fails to provide a basis on which Qwest may claim that LFACs contains confidential information to which CLECs should be denied access.

Put simply, Qwest has failed to show that it is equally subject to the inaccuracy and unreliability of the RLDT in light of its half-decade of direct access to and use of updated LFACs information. This Commission thus should find no parity of access and, further, direct Qwest to provide direct access to LFACs in order to remedy the competitive advantage it has given to itself since the passage of the Act.

**a. A “Parity” Argument Provides No Defense Where There Is No Parity Of Use.**

Qwest returns, time and again, to the contention that CLECs’ concerns about the inaccuracies in, and inherent unreliability of, the RLDT are driven by a desire for “more than parity.” Yet, in a significant number of instances, there is no parity of use. CLECs alone are thus required to work around the inconsistencies in, and the absence and inadequacy of, the information contained in the RLDT.

Qwest has made clear that it will not condition loops in order to provide xDSL service to end user customers, nor will it provide xDSL service except in the line sharing context. To the extent, therefore, that the RLDT contains inaccurate or incomplete information regarding whether a loop requires conditioning (e.g., removal of bridged taps and load coils), only CLECs are subject to inaccuracies in that information. Likewise, to the extent that a CLEC cannot obtain RLDT information based on an end user’s address – which is the method by which the RLDT permits CLECs to access second line information – only CLECs are forced to work around the RLDT’s deficiencies. Indeed,

to the extent that the RLDT contains any inconsistencies between the RLDT information for an address with an associated telephone number or does not include second line information at all, only CLECs are left to resolve the problems created by the RLDT's deficiencies.

It is patently apparent that Qwest itself is not subject to numerous of the deficiencies in the information contained in the RLDT. Thus, Qwest should not be permitted to rely upon a "parity" argument in the absence of an evidentiary showing that there is parity of use. Because Qwest has not and can not come forward with this type of evidence, Loop Issues 14(a) and 24 should be resolved in Covad's favor, and this Commission should find that Qwest has not satisfied Checklist Item 4.

**b. Covad Has Not Endorsed the RLDT.**

Equally unpersuasive is Qwest's argument that Covad has somehow already endorsed Qwest's RLDT. As Covad made clear during the line sharing summit in which that document was disseminated, in the document itself, and during the course of Workshop 5, the mere fact that Qwest technically included all the information mandated by the FCC did not translate into Covad's belief that the RLDT was reliable or accurate.

**c. OSS Testing**

Qwest suggests that any concerns voiced by CLECs regarding the RLDT will be addressed through OSS testing. Such testing, however, defers, but does not close, the issues of whether there is parity access to loop makeup information and/or associated deficiencies in connection therewith. Presumably subsumed within the parity evaluation are the issues of whether (1) Qwest provides itself with a competitive advantage by receiving early and, perhaps exclusive, LFACs updates; and (2) Qwest has corrected the

software glitch that prevents CLECs from pre-qualifying loops where there's no working telephone number/unpublished number, or the end user is a new Qwest voice customers. Covad therefore expressly and unambiguously reserves its right to review and, if necessary, challenge those data results.

More importantly, as set forth above, there are numerous problems, such as second line and loop conditioning requirements, that will be neither identified nor resolved through OSS testing. Thus, to remedy the uncertainty and inaccuracies injected by Qwest into the pre-ordering process through the vehicle of an incomplete and inaccurate RLDT, Qwest must be required to improve the accuracy of its databases and, like Verizon, to provide CLECs with direct access to the LFACs database.

### **III. CONCLUSION**

For the reasons set forth above regarding the Raw Loop Data Tool impasse issue, Covad respectfully requests that this Commission withhold § 271 approval until Qwest corrects the serious and on-going performance problems identified by Covad. Until such problems are completely and finally corrected, significant barriers to market entry by CLECs will continue to exist.



Dated this \_\_\_\_ day of July, 2001.

Respectfully submitted,

COVAD COMMUNICATIONS COMPANY

By:

\_\_\_\_\_  
K. Megan Doberneck  
Senior Counsel  
7901 Lowry Boulevard  
Denver, CO 82030  
720-208-3636  
720-208-3256 (facsimile)  
e-mail: [mdoberne@covad.com](mailto:mdoberne@covad.com)



1                               BEFORE THE PUBLIC UTILITIES COMMISSION  
2                               OF THE STATE OF COLORADO  
3                               Docket No. 97I-198T - Workshop 5

4 \* \* \*

5 IN THE MATTER OF THE INVESTIGATION OF US WEST

6 COMMUNICATIONS, INC.'S COMPLIANCE WITH SS 271(c)

7 OF THE TELECOMMUNICATIONS ACT OF 1996.

9 Pursuant to continuation, the Technical Workshop  
10 was held at 10:20 a.m., July 26, 2001, at 3898 South  
11 Wadsworth Boulevard, Lakewood, Colorado, before  
12 Facilitators Hagood Bellinger and Martin Skeer.

13 APPEARANCES

14 (As noted in the transcript.)

1 P R O C E E D I N G S

2 MR. BELLINGER: If we can get started.  
3 For the record, this is part of

8 MR. BELLINGER: Are we going to have  
9 any witnesses identify themselves?

10 MR. ZULEVIC: Mike Zulevic, Covad.

11 MS. BEWICK: Penny Bewick, New Edge.

12 MR. STEESE: Jean Liston will be a  
13 witness as well.

14 MS. QUINTANA: Becky Quintana.

15 (The witnesses were sworn to state the  
16 whole truth.)

17 MR. BELLINGER: It's all yours, Chuck.

18 MR. STEESE: In the last workshop, as I  
19 understand it, we were asked to come forward and in,  
20 quote, 15 minutes give a brief overview of the FOC  
21 trial.

22 Covad and Qwest have had a series of  
23 meetings wherein we exchanged data. We've calculated  
24 that data from our perspective and have already filed  
25 briefs, last Wednesday or Thursday, somewhere in there,

4

1 on the very subject.

2 One issue. When you look at the data  
3 in terms of tracking the FOC trial, not the raw loop  
4 data tool analysis, I think Covad is withdrawing their  
5 data, and Qwest's data is the data in the record at  
6 this point.

7 We're going to have Ms. Liston give a  
8 brief overview of what we've done in terms of the data  
9 reconciliation, what we've learned, and then allow  
10 Covad to do the same.

11 MR. BELLINGER: Is this data filed with

12 your briefs? How will we track this data?

13 MR. STEESE: The data was provided --  
14 was the final data provided in your final rebuttal  
15 testimony? If not, we can provide it.

16 MS. DOBERNECK: It was circulated after  
17 the call we had.

18 MS. JENNINGS-FADER: Does that mean  
19 it's not an exhibit?

20 MR. STEESE: We supplemented the record  
21 from Workshop 5 with a transcribed telephone call.

22 MS. JENNINGS-FADER: Is that an  
23 exhibit?

24 MR. STEESE: No. We considered it part  
25 of the record, but it was not marked as an exhibit.

5

1 MS. DeCOOK: I don't think your data  
2 was made part of the record either.

3 MR. STEESE: It was circulated as part  
4 of that conference call.

5 MS. DeCOOK: It hasn't been made part  
6 of the record and put in the record as an exhibit.

7 MR. STEESE: Depends on how one  
8 interprets the term "record."

9 I don't see it necessarily having to be  
10 discussed here to be a part of the record. If that's  
11 the case we should market the transcript and associated  
12 data that was disclosed by Covad and us. That's fine.

13 MS. JENNINGS-FADER: Because I don't  
14 know where it is and can't put my hands on it and have  
15 no way to track it, I think that's true for the staff

16 as well, we'd like to have it in as an exhibit so we  
17 can refer to it.

18 MR. STEESE: That's fine. We have no  
19 clue. We don't have our exhibit list from 5, so  
20 whatever the next number in line is.

21 MR. STEESE: I don't know that either.  
22 I thought it was part of the record because we filed it  
23 as part of the transcript. I didn't see the need to  
24 mark it. If you wanted to call it Exhibit 500 or  
25 something we know is large enough so that way there's

6

1 no problem, that's fine. We'll call -- Exhibit 500,  
2 that's okay, is the transcript, the material circulated  
3 by Covad and Qwest all collected together.

4 MS. DOBERNECK: That's fine.

5 MS. JENNINGS-FADER: I don't know that  
6 I have those documents.

7 MR. STEESE: They were filed and  
8 circulated several weeks ago when we had the conference  
9 call.

10 MS. JENNINGS-FADER: Filed with the  
11 Commission?

12 MS. DOBERNECK: I don't believe they  
13 were filed. I believe they were circulated to the  
14 service list. I'm not -- I don't recall actually  
15 seeing the filing of the transcript and Qwest's final  
16 data.

17 MS. JENNINGS-FADER: My recollection is  
18 that I've never seen a hard copy, and I would have seen  
19 that presumably had it been filed with the Commission.



## **COMMUNICATOR**

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**To:** Qwest Wholesale Customers  
**From:** Tina Hubis, Qwest IT Wholesale Systems Communications Manager  
**Date:** September 28, 2001  
**Subject:** Loop Qualification Enhancement – Auto Qualification Short-Term

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Access to the "Loop Qualification Enhancement – Auto Qualification" functionality will be available on October 1, 2001. When IMA returns a "Not Qualified" response for a loop qualification request, the CLEC has the option to have the "Not Qualified" TN periodically re-qualified (Auto Qualification).

To request Auto Qualification of a TN, the CLEC needs to submit an Auto Qualification request to the following e-mail address ([Josier@qwest.com](mailto:Josier@qwest.com)) in the Interconnect Service Center. The Auto Qualification request must contain the CLEC name, CLEC e-mail address, and "Not Qualified" end user TN being submitted for loop qualification.

Periodically (i.e., approximately every thirty days), Qwest will re-qualify the TNs in the database. The Qwest application will generate an e-mail notification to the CLEC if and/or when the TN qualifies.

To preserve the integrity of TN re-qualification requests, only a single request for a re-qualification can be pending at a given time. In the event that either Qwest or another CLEC has requested re-qualification of a TN, subsequent requests to re-qualify the same TN will be rejected.





Rice, David L.

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From: Doberneck, Megan [mdoberne@Covad.COM]  
Sent: Thursday, September 06, 2001 5:18 PM  
To: 'rice@millernash.com'  
Subject: FW: Disturbing Feedback on Qwest Tech Behavior in MN

> -----Original Message-----

> From: Cutcher, Minda  
> Sent: Wednesday, August 15, 2001 9:32 AM  
> To: Ken Beck (E-mail)  
> Cc: jliston@uswest.com; Tom Allen (E-mail)  
> Subject: Disturbing Feedback on Qwest Tech Behavior in MN

>

>

> Ken,

> I have included (below) a note I received yesterday from our Sales  
> organization. It details yet another instance where a Qwest technician  
> has actively solicited an existing Covad end user while on a repair call.  
> I want you to follow up on the details (please let me know if you need any  
> more information) and let me know what corrective action will be taken and  
> by when to address this specific incident. Once again, I am going to ask  
> what else is going to be done, region-wide, to insure this behavior stops.

> Jean,

> You may recall that I spoke to the issue of Qwest actively  
> soliciting Covad end users in both the WA and CO 271 workshops. Despite  
> your testimony that training has addressed the issue, it still persists.  
> Qwest is the worst offender among all other ILECs in this regard. I  
> appreciate the words that training, discipline, etc are taking place, but  
> what means more is action. This type of anti-competitive behavior must end.

> Mindy Cutcher  
> VP ILEC Relations  
> Covad Communications

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> A customer of ours in MN had trouble on their line, so our TAC  
> opened an ILEC ticket. QWest is the ILEC. The Qwest tech was on site  
> with the customer and also took the opportunity to solicit the customer's  
> business. The tech gave the customer a DSL brochure for business grade  
> DSL, encouraging the customer to switch. The customer didn't care for  
> that (he's not a QWest fan) and let us know. Jeff Heelan is the AE. The  
> customer contact info is below. He told Jeff he would be willing to  
> discuss this further with someone from Covad if needed.

>

> Commerce Express, contact: Duane Miller, Inver Grove Heights, MN,  
> 651-451-7332 circ # 100-679-218. Trouble ticket # 387274.

>